

REMARKS/ARGUMENTS

Favorable reconsideration of this application, as presently amended and in light of the following discussion, is respectfully requested.

Claims 2-3, 5-7, 9 and 11 are pending in the present application. Claim 6 is amended by the present amendment. Support for amended Claim 6 can be found at least at Fig. 23 and pp. 43-44 of the originally filed disclosure. No new matter is added.

In the Office Action, Claims 2-3, 5-7, 9 and 11 are rejected under 35 U.S.C. 112, second paragraph; Claims 2-3, 6, 9 and 11 are rejected under 35 U.S.C. § 101; and Claims 2-3, 5-7, 9 and 11 are rejected under 35 U.S.C. § 102(b) as anticipated by Wiser et al. (U.S. Pat. 6,385,596, herein Wiser).

The Office Action rejects Claims 2-3, 5-7, 9 and 11 under 35 U.S.C. U.S.C. § 112, second paragraph, as indefinite. Applicants respectfully traverse this rejection.

The Office Action asserts that “the step of ‘inputting specifying information specifying the set of content ... to be delivered’ implicitly requires a selection of streaming or downloaded file as the method of content delivery ...” However, this assertion is a misinterpretation of the claim language. Claim 1, for example, recites the features of “presenting *a list of a plurality of sets of content* including at least a set of content to be delivered by streaming and a set of content to be delivered by downloaded files at a content processing apparatus ... [and] inputting specifying information *specifying the set of content*, from the sets of content on the list, to be delivered to the content processing apparatus...” Claim 1, therefore, recites that a plurality of sets of content are presented, and that an input is received specifying a set of the presented content for delivery. Claim 1 does not, explicitly or implicitly, recite that a user selects a method of content delivery upon selecting the set of content from the presented set of content. Instead, the first two limitations in Claim 1 recite “presenting *a list of a plurality of sets of content* ... at a content processing apparatus ... [and]

inputting specifying information *specifying the set of content*, from the sets of content on the list, to be delivered to the content processing apparatus...” Thus, in the “inputting step” a selection is made as to the sets of content to be delivered irrespective of the method of delivery of the content, and this step does not require “a selection of streaming of downloaded file as the method of content delivery” as asserted in the Office Action. Accordingly, the last limitation of Claim 1, which recites “automatically acquiring ... without receiving a user input selecting streaming or downloaded file as the method of content delivery ...”, should not be amended to recite “without receiving an additional user input ...”, as asserted in the Office Action, because Claim 1, neither explicitly or implicitly, previously recites a step of receiving a user input selecting a delivery method.

The Office Action also asserts that the claimed feature of “said startup file corresponding to a license of the specified set of content” is indefinite because “it is unclear what such a relationship entails”. The use of the term “corresponding”, however, clearly indicates that the startup file is associated in some way with the license of the specified set of content. Thus, as noted in the Office Action, this language specifies that there is some correspondence (i.e. link or association) between the startup file and the license, but could not reasonably be interpreted as “merely having a startup file and a license extent [sic] without any explicit connection between the two”, as asserted in the Office Action.

Therefore, for at least the reasons discussed above, Applicants respectfully submit that pending Claims 2-3, 5-7, 9 and 11 particularly point out and distinctly claim the subject matter which Applicants regard as the invention. Accordingly, Applicants respectfully request that the outstanding rejection under 35 U.S.C. 112, second paragraph, be withdrawn.

The Office Action rejects Claims 2-3, 6, 9 and 11 under 35 U.S.C. § 101, as directed to non-statutory subject matter. Applicants respectfully traverse this rejection.

Regarding Claims 2 and 6, the Office Action asserts that these claims “are not tied to a particular machine ...” and are not statutory for this reason. Claim 2, however, recites “presenting ... at a content processing apparatus”, “... to be delivered to the content processing apparatus from the content delivery apparatus ...”, “receiving, by the content delivery apparatus ...”, and “automatically acquiring by the content processing apparatus ...”. Thus, in contrast to the assertion set forth in the Office Action, the steps recited in Claim 2 are tied to a particular machine, and are statutory. Claim 6 is amended to recite specific hardware features of the content processing apparatus that perform the steps recited in this claim, and is therefore tied to a particular machine.

As to Claims 3, 9 and 11, the Office Action asserts that these claims are non-statutory because the claims are “drawn to an apparatus comprising solely software components ...”. Applicants respectfully traverse this assertion, as the features recited in Claims 3, 9 and 11 could not reasonably be interpreted as solely software.

Applicants note that Claim 3 recites “means for” limitation and a proper analysis under 35 U.S.C. §112, sixth paragraph, requires consideration of the structure corresponding to each “means” recited in the claim. Particularly, 35 U.S.C. §112, sixth paragraph, states that claim limitation expressed in means-plus-function language “shall be construed to cover the corresponding structure...described in the specification and equivalents thereof.” Thus, the claimed “means” includes the appropriate **structure** disclosed in the specification.

In support of this position, Applicants note *WMS Gaming, Inc. v. International Game Technology*, 184 F.3d 1339 (Fed. Cir. 1999), where the Federal Circuit held that the time domain processing means is a microprocessor programmed to carry out the algorithm. In *WMS Gaming*, the Federal Circuit noted the statutory requirement to focus on corresponding structure.

Applicants note that Fig. 23 and pp. 43-44 of the specification provide clear support for the structure that performs the features recited in Claim 3.

It does not appear as though the Office has interpreted these means-plus-function claim features in accordance with M.P.E.P. § 2181-82, as no reference is made to the specification to support the current interpretation of these elements, whatsoever.

Moreover, independent Claim 9 is directed to a content processing *apparatus*, that includes *a display, an interface, a receiver, and an acquisition unit*. It is unclear how solely software could be construed as each of these components, as software alone would be inoperable without an interrelationship between a hardware component (i.e. machine or apparatus) to be configured as these features are recited in Claim 9.

To the extent that the Office is taking the position that the inclusion of a software element in an otherwise statutory apparatus claim somehow takes the claims outside the realm of statutory subject matter, the Office is reminded that:

Computer programs are often recited as part of a claim. USPTO personnel should determine whether the computer program is being claimed **as part of an otherwise statutory manufacture or machine**. In such a case, the claim **remains statutory irrespective of the fact that a computer program is included in the claim.**¹ (emphasis added)

Accordingly, should this rejection be maintained in a future communication, Applicant respectfully requests that the Office provide substantial evidence as to how apparatus Claims 3, 9 and 11 can be considered software only, and how the means-plus-function elements in Claim 3 specifically are interpreted as mandated by M.P.E.P. § 2181-82.

Thus, for at least the reasons discussed above, Applicants respectfully submit that Claims 3, 9 and 11 are directed to statutory subject matter. Accordingly, Applicants

¹ See Interim Guidelines for Examination of Patent Applications for Patent Subject Matter Eligibility, USPTO 2005 (Annex IV, Computer Related Non-Statutory Subject Matter) page 53

respectfully request that the rejection of Claims 3, 9 and 11 under 35 U.S.C. § 101 be withdrawn.

The Office Action rejects Claims 2-3, 5-7, 9 and 11 under 35 U.S.C. § 102(b) as anticipated by Wiser. Applicants respectfully traverse this rejection as independent Claims 2-3, 6-7 and 9 recite novel features clearly not disclosed by Wiser.

Independent Claim 2, for example, recites, in part, a content delivery method for a content delivery system for delivering content from a content delivery apparatus to a content processing apparatus by way of a network, the method comprising:

... receiving, by the content processing apparatus from the content delivery apparatus, ***a startup file specifying streaming or downloaded file as a method of content delivery***, said startup file corresponding to a license of the specified set of content; and

automatically acquiring by the content processing apparatus, without receiving a user input selecting streaming or downloaded file as the method of content delivery, ***the set of content delivered from the content delivery apparatus according to the startup file***.

Independent Claims 3, 6-7 and 9, while directed to alternative embodiments, recite similar features.

Turning to the applied reference, Wiser describes a secure online music distribution system. As shown in Fig. 8 and described at col. 11, ll. 39-48 of Wiser, a user is presented with an option to either purchase content or listen to a free preview of content. When a user selects the option to purchase content, a version of the content is downloaded to the user's device. On the other hand, when a user selects to preview the content, the free preview is streamed to a user's device. Therefore, once a version of the content is selected by the user, the content is immediately delivered to the user's device by a predetermined method based on the version of content selected.

Claim 1, on the other hand, recites that when a set of content is specified, the content processing apparatus receives, "from the content delivery apparatus, ***a startup file specifying***

streaming or downloaded file as a method of content delivery, said startup file corresponding to a license of the specified set of content”, and automatically acquires “*the set of content delivered from the content delivery apparatus according to the startup file*”.

Wiser fails to disclose any file similar to the claimed startup file, which specifies a method of content delivery, as recited in independent Claim 1.

At p. 7, the Office Action cites col. 4, ll. 51-67 of Wiser, and appears to assert that the “media voucher” is analogous to the claimed “startup file”. This cited portion of Wiser describes that the integrity of a purchase is secured, in part, by a separate trusted object called a media voucher. This media voucher uniquely identifies the media being purchased, the specific purchase transaction, and the specific delivery server to deliver the purchased media to the media player.

Thus, the media voucher in Wiser merely records the specifics of a completed transaction and does not “*specify streaming or downloaded file as a method of content delivery*”, as does the claimed startup file. Moreover, since the media voucher is only valid for the purchase of content, which appears to always be delivered by download in Wiser’s system, it is unclear why the media voucher in Wiser would indicate a method of content delivery, since purchased content appears to always be downloaded.

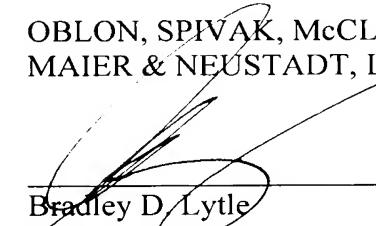
Therefore, for at least the reasons discussed above, Applicants respectfully submit that Wiser fails to teach or suggest a content processing apparatus that receives, “from the content delivery apparatus, *a startup file specifying streaming or downloaded file as a method of content delivery*, said startup file corresponding to a license of the specified set of content”, and automatically acquires “*the set of content delivered from the content delivery apparatus according to the startup file*”, as recited in independent Claim 2.

Accordingly, Applicants respectfully request that the rejection of Claim 2 under 35 U.S.C. § 102 be withdrawn. For substantially similar reasons it is also submitted that independent Claims 3, 6-7 and 9 patentably define over the applied references.

Consequently, in view of the present amendment and in light of the foregoing comments, it is respectfully submitted that the invention defined by Claims 2-3, 5-7, 9 and 11 is definite and patentably distinguishing over the applied references. The present application is therefore believed to be in condition for allowance and an early and favorable reconsideration of the application is therefore requested.

Respectfully submitted,

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